

snapshot date, for the first reimbursement claim for each subscriber that has newly enrolled in the EBB Program.⁷ AT&T requests a similar waiver, but limits its request to existing AT&T subscribers that are newly enrolled in the EBB Program.⁸ C Spire, Radiate, WOW, and AT&T request a month delay to submit the first reimbursement claim for impacted subscribers.⁹ Radiate further seeks a waiver that would allow it to claim reimbursement for EBB Program discounts passed through to its subscribers that are not enrolled in the National Lifeline Accountability Database (NLAD) by the snapshot date for the relevant service month but that are enrolled in NLAD by the time Radiate seeks reimbursement for newly enrolled subscribers as provided in its first waiver request.¹⁰ Point seeks a waiver until August 16, 2021 to enroll subscribers for May, June, and July 2021 and submit its reimbursement claims for those subscribers.¹¹

2. Based on the Commission's established waiver standard, we grant the petitions of C Spire, WOW, and AT&T, grant-in-part and deny-in-part Radiate's petition, and deny Point's petition. We conclude that the requested limited waiver of C Spire, WOW, AT&T, and Radiate seeking an additional month to submit the first claims for newly-enrolled subscribers will not materially impact or undermine USAC's ability to track disbursements and to provide a projection for the depletion of the EBB Fund, and will serve the public interest. However, we find that Radiate and Point have failed to show good cause exists to extend that waiver and allow them also to receive reimbursement from the Emergency Broadband Connectivity Fund, when, at the time they provided discounts to specific subscribers, those subscribers were not enrolled in the program. Allowing providers to receive reimbursement from a limited fund for subscribers who were not enrolled in the NLAD prior to receiving the discount from the provider is not in the public interest and unavoidably threatens the integrity of the EBB Program.

II. BACKGROUND

3. The EBB Program uses available funding from the Emergency Broadband Connectivity Fund to support broadband service and connected devices for low-income households during the COVID-19 pandemic.¹² Participating providers receive reimbursement from the EBB Program for discounts granted to eligible low-income households for qualifying service and connected devices.¹³ Participating providers must transmit the household's information to the NLAD in order to successfully enroll them in the EBB Program and also to seek reimbursement for any service and connected device support provided to the household.¹⁴

4. Reimbursement claims for the EBB Program are based on the number of Program subscribers enrolled with each provider in the NLAD as of the first day of each month (referred to as the

⁷ C Spire EBB Waiver Petition at 1, 4; Radiate EBB Waiver Petition at 1, 5; WOW EBB Waiver Petition at 1, 4.

⁸ AT&T EBB Waiver Petition at 1, 3.

⁹ C Spire EBB Waiver Petition at 1, 4; Radiate EBB Waiver Petition at 1, 5; WOW EBB Waiver Petition at 1, 4; AT&T EBB Waiver Petition at 1, 4.

¹⁰ Radiate Holdings, L.P. et al. Supplement to Petition for Waiver and Request for Expedited Treatment, WC Docket No. 20-445, at 3 (filed May 27, 2021), <https://ecfsapi.fcc.gov/file/10528057105206/Radiate%20Holdings%20Supplement%20to%20Petition%20for%20Expedited%20Waiver%20May%2027%202021%20Dkt%2020%20445.pdf> (Radiate Supplement to EBB Waiver Petition).

¹¹ Point EBB Waiver Petition at 1-2.

¹² 47 CFR § 54.1602.

¹³ 47 CFR § 54.1608.

¹⁴ *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Report and Order, FCC 21- 29, 23, para. 47 (2021) (*EBB Program Order*) ("all providers, including those that use an approved alternative verification process or verify eligibility via a school. . . must enroll their subscribers in NLAD prior to claiming reimbursement for those subscribers, to prevent duplicative support between providers.").

“snapshot date”).¹⁵ In the *EBB Program Order* the Commission explained that the uniform snapshot date would: 1) reduce the risk that the Lifeline program would reimburse multiple providers for serving the same customer in a given month; 2) assist with the adoption of uniform audit procedures; and 3) aid in the accurate calculation of support based on the number of subscribers listed in NLAD.¹⁶ The Commission concluded that the NLAD “plays a vital role” in the claims process by capturing the households that are enrolled with each provider on the first of each month and ensuring that providers can only claim those subscribers for reimbursement.¹⁷

5. To receive reimbursement, providers must submit certified reimbursement claims through the Lifeline Claims System by the 15th of each month, or the following business day in the event the 15th is a holiday or falls on a weekend.¹⁸ If the participating provider fails to submit a certified reimbursement claim by the deadline for that month, the reimbursement claim will not be processed.¹⁹ This method helps provide USAC with actual reimbursement claims information from providers as soon as possible after each service month, which enables USAC to report the disbursement information to the public and to create a forecast for the projected final month of the program.²⁰

III. DISCUSSION

6. Based on the record before us, we grant the limited waiver requests for newly-enrolled subscribers and allow C Spire, Radiate, and WOW, an additional month to submit the first reimbursement claim for a newly-enrolled EBB Program subscriber and allow AT&T an additional month to submit the first reimbursement claim for an existing AT&T subscriber that is also newly-enrolled in the EBB Program. We also deny Radiate’s separate waiver request and Point’s waiver request to allow reimbursement for service provided to households before they were enrolled in the NLAD, finding that doing so would undermine the integrity of the EBB Program.

7. As a general matter, “an agency must adhere to its own rules and regulations.”²¹ Although strict application of a rule may be justified “to preserve incentives for compliance and to realize the benefits of easy administration that the rule was designed to achieve,”²² the Commission’s rules may be waived for “good cause shown.”²³ The Commission may exercise its discretion to waive a rule where special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.²⁴ The Commission may take into account considerations of hardship, equity, or more effective implementation of policy on an overall basis.²⁵ The Bureau, under delegated authority, may act on requests for waiver of rules.²⁶

¹⁵ 47 CFR § 54.1608(a); *EBB Program Order* at 4, para. 8.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* § 54.1608(g).

¹⁹ *Id.*

²⁰ *EBB Program Order* at 50, paras. 98, 100.

²¹ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

²² *Mary V. Harris Found. v. FCC*, 776 F.3d 21, 28 (D.C. Cir. 2015).

²³ 47 CFR § 1.3.

²⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁵ *Id.* at 1166; *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

²⁶ 47 CFR § 0.291(b).

8. In their Petitions, C Spire, Radiate, and WOW request a waiver of the 15-day deadline for the first reimbursement claim for a newly-enrolled EBB subscriber,²⁷ and AT&T requests a waiver of the 15-day deadline for reimbursement claims for existing AT&T subscribers that are newly-enrolled EBB subscribers.²⁸ C-Spire, Radiate, WOW, and AT&T also request a month delay to submit the reimbursement claims for impacted subscribers for the EBB Program.²⁹ C-Spire, Radiate, WOW, and AT&T all state that they plan to offer the EBB discount on a variety of broadband service offerings with different standard rates, making it more complicated and time-consuming to calculate the appropriate claim amount for each subscriber.³⁰

9. Based on the circumstances described by C-Spire, Radiate, WOW, and AT&T and our prior grants of similar waiver requests,³¹ we are convinced that the 15-day deadline for the first reimbursement claim for a newly-enrolled EBB subscriber poses a substantial hardship to C-Spire, Radiate, WOW, and AT&T in their EBB Program participation and amounts to a special circumstance that warrants a deviation from the general rule. We find that granting this limited waiver will not materially undermine USAC's ability to track disbursements and forecast for the projected final month of the program as the waiver Petitioners are seeking is limited to a one-month delay of reimbursement claims for impacted subscribers.³² Indeed, the one month deadline extension will provide C-Spire, Radiate, WOW, and AT&T with additional time to prepare their systems and handle new EBB Program enrollments appropriately.³³ In addition, in a supplement to its waiver petition, C Spire has proposed to "provide [USAC] with a monthly forecast of the EBB Program support that it anticipates drawing in the following month for newly enrolled subscribers."³⁴ Similarly, Radiate, WOW, and AT&T have also proposed submitting a good faith estimate for those subscribers that they are seeking an extension for.³⁵ We find that these reimbursement estimates for newly-enrolled EBB subscribers will support USAC's ability to conduct forecasts in the absence of certified claims data for the impacted subscribers. Finally, we determine that granting the Petitions will serve the public interest because the objective of the EBB Program is to encourage as many service providers as possible to offer the EBB discount on a variety of services. To this end, we are convinced by the arguments of C-Spire, Radiate, WOW, and AT&T that the

²⁷ C Spire EBB Waiver Petition at 1, 4; Radiate EBB Waiver Petition at 1, 5; WOW EBB Waiver Petition at 1, 4.

²⁸ AT&T EBB Waiver Petition at 1, 4.

²⁹ C Spire EBB Waiver Petition at 1, 4; Radiate EBB Waiver Petition at 1, 5; WOW EBB Waiver Petition at 1, 4; AT&T EBB Waiver Petition at 1, 4.

³⁰ See C Spire EBB Waiver Petition at 4; Radiate EBB Waiver Petition at 6; WOW EBB Waiver Petition at 2-3; AT&T EBB Waiver Petition at 3.

³¹ *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Order, DA 21-455 (2021), <https://docs.fcc.gov/public/attachments/DA-21-455A1.pdf>; *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Order, DA 21-557 (2021), <https://docs.fcc.gov/public/attachments/DA-21-557A1.pdf>.

³² C Spire EBB Waiver Petition at 5; Radiate EBB Waiver Petition at 7; WOW EBB Waiver Petition at 1, 4; AT&T EBB Waiver Petition at 1, 4.

³³ Radiate EBB Waiver Petition at 7; WOW EBB Waiver Petition at 4; AT&T EBB Waiver Petition at 4.

³⁴ Cellular South Licenses, LLC Supplement to Petition for Limited Waiver, WC Docket No. 20-445 (filed May 27, 2021), <https://ecfsapi.fcc.gov/file/105272084617015/2021%200527%20C%20Spire%20EBB%20Waiver%20Supplement.pdf>, at 1.

³⁵ Radiate Supplement to EBB Waiver Petition at 1-2, WideOpenWest Finance, LLC Supplement to Expedited Petition for Review, WC Docket No. 20-445 (filed June 2, 2021), https://ecfsapi.fcc.gov/file/10602426103569/WOW%20EBB%20Waiver%20Petition_Supplement%2006022021.pdf, at 2; AT&T EBB Waiver Petition at 5.

added flexibility offered by the waiver will encourage them to offer the EBB discount on a broader range of services.³⁶

10. Additionally, Radiate and Point each request a waiver of the EBB Program requirement that providers claim only those households that are enrolled with the provider in the NLAD as of the snapshot date.³⁷ Specifically, Radiate requests a waiver that “would allow it to claim reimbursement for the month in which newly-enrolled customers first receive EBB Program-qualified broadband service from Radiate provided (1) that the customers were receiving qualified service on the snapshot date (the 1st of the month after the month in which they were enrolled), (2) that the customers have been successfully enrolled into the NLAD by the date reimbursement is claimed (which may occur after the end of the month when they first receive EBB Program-qualified service from Radiate), and (3) that the request for reimbursement is made within thirty (30) days after the 15th of the month following the month when they were enrolled and began to receive qualified broadband service from Radiate.”³⁸ Point’s petition also requests a waiver that would “allow Point until August 16, 2021 to submit the snapshot report of Point’s enrolled subscribers for May 2021, June 2021, and July 2021.”³⁹ Point’s intent is to seek a waiver that will allow it to claim reimbursement for subscribers that were not enrolled with the provider in the NLAD as of the snapshot dates for May 2021, June 2021, and July 2021, even in cases where Point was providing service to the subscriber. We understand these requests to be requests for a waiver of sections 54.1608(a) and (g) of the Commission’s rules, which provide that EBB Program support for qualifying broadband service that is provided directly to the participating provider is “based on the number of actual qualifying low-income households listed in the [NLAD] that the participating provider serves directly at the first of the month”⁴⁰ and set forth the date by which providers shall submit their certified reimbursement claims.⁴¹ Section 54.1608(g) further provides that if a provider fails to submit a certified claim by the deadline for that month, the claim will not be processed.⁴²

11. As we have previously explained,⁴³ for operational and program integrity purposes, providers cannot claim reimbursement for a household that is not enrolled in the NLAD, and the NLAD serves as an important program integrity function, as only a successful enrollment in the NLAD is proof to the provider that the customer is eligible to receive the Emergency Broadband Benefit. We are sympathetic to the challenges faced by providers who have agreed to participate in this program, and understand that Radiate and Point describe frustrations enrolling prospective subscribers.⁴⁴ However, over three million households have already been enrolled in the Program by hundreds of providers, indicating that many providers have been able to use the guidance provided in the NLAD enrollment tools USAC has made available to providers to successfully enroll customers and overcome any technical

³⁶ C Spire EBB Waiver Petition at 5-6; Radiate EBB Waiver Petition at 8; WOW EBB Waiver Petition at 4-5; AT&T EBB Waiver Petition at 5.

³⁷ Radiate Supplement to EBB Waiver Petition at 2-3; Point EBB Waiver Petition at 1.

³⁸ *Id.*

³⁹ Point EBB Waiver Petition at 1. Based on conversations with Point’s counsel, we understand that Point had not enrolled any of its consumers in NLAD as of July 9, 2021 due to access issues.

⁴⁰ 47 CFR § 54.1608(a).

⁴¹ 47 CFR § 54.1608(g).

⁴² *Id.*

⁴³ Emergency Broadband Benefit Program, WC Docket No. 20-445, Order, DA 21-635, paras. 12-15 (2021).

⁴⁴ Radiate EBB Waiver Petition at 6; Radiate Supplement to EBB Waiver Petition at 2-3; Point EBB Waiver Petition at 2.

challenges.⁴⁵ USAC has also offered providers training and instructions on the NLAD system and consistently hosted office hours during which providers could ask questions of USAC staff.⁴⁶ In addition, USAC has introduced enhancements to both the National Verifier and the NLAD that will streamline the service provider experience without creating program integrity risks. For example, providers that have a National Verifier application ID and certain other information for the consumer can now look up their application status in the National Verifier and can enroll them in NLAD without an exact match to the address that appears on the consumer's National Verifier application. USAC also relaxed certain aspects of the requirement for an exact address match to streamline the process of enrolling existing Lifeline subscribers who reside in the Lifeline NLAD opt-out states (California, Oregon, and Texas). These changes are part of ongoing system improvements to optimize the user experience for both service providers and consumers who participate in the EBB Program.

12. We find that granting a waiver to Radiate and Point would undermine the program integrity controls offered by the NLAD, and would invite waste, fraud, and abuse. Permitting providers to claim subscribers for EBB discounts before the subscribers were even enrolled in NLAD and determined to be fully eligible for the EBB Program eliminates all the safeguards offered by the NLAD, which not only prevents duplicative support but ensures that providers can only claim those subscribers that were enrolled with them as of the uniform snapshot date. Moreover, these program integrity risks could not be successfully mitigated via a conditional waiver without creating a substantial risk of consumer confusion or unexpected fees, for consumers who might believe their provider has enrolled them in the EBB Program, only to find out up to a month later that their eligibility had not actually been verified or they had inadvertently been receiving duplicative support.

IV. ORDERING CLAUSE

13. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in in Section 904 of Division N, Title IX of the Consolidated Appropriations Act, 2021, Pub. L. No 116-260, 134 Stat. 1182, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that section 47 CFR § 54.1608(g) of the Commission's rules is WAIVED to the limited extent provided herein.

14. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 904 of Division N, Title IX of the Consolidated Appropriations Act, 2021, Pub. L. No 116-260, 134 Stat. 1182, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that the requests for waiver filed by AT&T, Cellular South Licenses, LLC, and WideOpenWest Finance, LLC are GRANTED.

15. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 904 of Division N, Title IX of the Consolidated Appropriations Act, 2021, Pub. L. No 116-260, 134 Stat. 1182, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that the request for waiver filed by Radiate Holdings, L.P. is GRANTED in part and otherwise DENIED.

16. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 904 of Division N, Title IX of the Consolidated Appropriations Act, 2021, Pub. L. No 116-260, 134 Stat. 1182, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that the request for waiver filed by Point Broadband Fiber Holding, LLC is DENIED.

⁴⁵ USAC, Emergency Broadband Benefit Program Enrollments and Claims Tracker (last updated July 5, 2021), <https://www.usac.org/about/emergency-broadband-benefit-program/emergency-broadband-benefit-program-enrollments-and-claims-tracker/>.

⁴⁶ USAC, Webinars and Trainings, <https://www.usac.org/about/emergency-broadband-benefit-program/webinars-and-trainings/> (last visited July 15, 2021).

17. IT IS FURTHER ORDERED, that pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau